

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: MIKE WELTER, dba M&M ENTERPRISES	ADMINISTRATIVE CONSENT ORDER NO. 2008-AQ- 10 2008-SW-08
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TO: Mike Welter
dba M&M Enterprises
P.O. Box 333
Sigourney, Iowa 52591

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Mike Welter, dba M&M Enterprises, for the purpose of resolving air quality and solid waste violations which have occurred at property owned by Mike Welter and located at 805 N. Shuffleton Street in Sigourney, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Any questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Kurt Levetzow, Field Office 6
Iowa Department of Natural Resources
1023 West Madison
Washington, Iowa 52353
Phone: 515/281-4801

Relating to legal requirements:
Anne Preziosi, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Urbandale, Iowa 50322
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

This order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the director to issue any order necessary to secure compliance with or

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MIKE WELTER, DBA M&M ENTERPRISES

prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II, (air quality), and the rules promulgated or permits issued pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the director to assess administrative penalties.

III. STATEMENT OF FACTS

1. On August 1, 2007, DNR Field Office No. 6 received a complaint that open burning was occurring on property owned by Mike Welter and located at 805 B. Shuffleton Street in Sigourney, Keokuk County, Iowa (the site).

2. On August 15, 2007, Bert Noll and Kurt Levetzow of DNR Field Office No. 6 investigated. The DNR personnel met Mike Welter near his office at the site. Mr. Welter stated that he had "burned trash, and it smoldered for a few days." Mr. Welter stated that the trash was generated by one of his businesses located on the property and associated with M&M Enterprises. Mr. Welter pointed out where the burn pile was located.

3. The DNR personnel viewed the burn pile. The burn pile had a tire in the middle of it. The materials in the burn pile included lumber, a few pieces of drywall, cardboard, and some pallets. Other types of solid waste had been pushed over an embankment and into a nearby ravine. Burned solid waste materials in the ravine included discarded tires and appliances. Unburned solid waste materials in the ravine included an automobile seat, a large plastic tank, and metal items.

4. An August 15, 2007, Notice of Violation letter was sent to Mr. Welter, requiring him to clean up the site and properly dispose of the solid waste at a permitted sanitary landfill by no later than September 18, 2007.

5. On October 3, 2007, DNR personnel re-inspected the site. Clean-up had not yet occurred.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-34 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2)

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MIKE WELTER, DBA M&M ENTERPRISES

(variances) and 23.2(3) (exemptions). The burning of trades wastes is specifically prohibited. The above facts demonstrate violations of this provision.

3. Iowa Code section 455B.304 provides that the Environmental Protection Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the director. The above facts demonstrate non-compliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Mike Welter, dba M&M Enterprises, agrees to do the following:

1. By no later than June 1, 2008, clean up any solid waste materials at any location on the site and submit to DNR Field Office No. 6 recycling or sanitary landfill disposal receipts; and

2. Pay a penalty of \$2000.00 (two thousand dollars) within 30 days of the date this order is signed by the director.

VI. PENALTY

Pursuant to the provisions of Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the director to assess administrative penalties, a penalty of \$2000.00 is assessed. The penalty must be paid within 30 days of the date this order is signed by the director. The administrative penalty is determined as follows:

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, DNR has determined that the most effective and efficient means of addressing the above-cited violations is the

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MIKE WELTER, DBA M&M ENTERPRISES

issuance of an administrative order with a penalty. The administrative penalty assessed by this order is determined as follows:

Economic Benefit – Mike Welter, dba M&M Enterprises, has achieved an economic benefit from open burning and improper waste disposal. He has saved time, labor, and landfill costs by not timely and properly removing, transporting and disposing of the solid wastes from the site. Based on these considerations, \$500.00 is assessed for this factor.

Gravity of the Violation – Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Further, the open burning of trade waste, as in this case, is specifically prohibited. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. The violation threatens the integrity of the regulatory program because compliance with the open burning regulations is required of all persons in this state. Additionally, compliance with proper solid waste disposal practices is expected of all persons in the state. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. Based on the above considerations, \$500.00 is assessed for this factor.

Culpability – Mike Welter, dba M&M Enterprises, has a duty to remain knowledgeable of the DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. Therefore, \$1000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

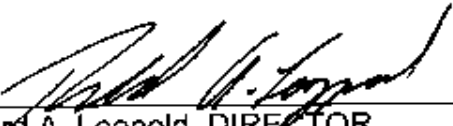
This administrative consent order is entered into knowingly and with the consent of Mike Welter, dba M&M Enterprises. For that reason, Mike Welter, dba M&M Enterprises, waives his right to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

Failure to comply with this order, including failure to timely pay any penalty, may result in the imposition of further administrative penalties or referral to the attorney general to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.146 and 455B.307. Compliance with Section "V. Order" of this administrative consent order constitutes full satisfaction of all requirements pertaining to the specific violations described in Section "IV. Conclusions of Law" of this administrative consent order. DNR reserves the right to bring enforcement action, including penalties, or to request that the attorney general initiate legal action to address other violations not described in Section "IV. Conclusions of

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MIKE WELTER, DBA M&M ENTERPRISES

Law" of this administrative consent order but which may arise from the facts summarized in Section "III. Statement of Facts" of this administrative consent order. DNR specifically reserves the right to pursue enforcement action, including penalties, for any current violations not specifically cited in this order.



Richard A. Leopold, DIRECTOR
Iowa Department of Natural Resources

Dated this 25 day of
April, 2008.



Mike Welter, dba M&M Enterprises

Dated this 24th day of
March, 2008.

Washington County Air Quality file; Anne Preziosi; Field Office No. 6; VII.C.1

RECEIVED

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